

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ROBERT J. LAURRANCE,  
Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, as Trustee for American Home  
Mortgage Assets Trust 2006-5, Mortgage-  
Backed Pass-Through Certificates Series  
2006-5; POWER REO MANAGEMENT  
SERVICES, INC., a Corporation;  
HOMEWARD RESIDENTIAL, Inc., a  
corporation; and Does 1-50  
Defendants.

3:13-cv-0694-LRH-WGC

ORDER

Before the Court is Defendants' Motion for Summary Judgment. Doc. #19.<sup>1</sup> Plaintiff Robert J. Laurrance ("Laurrance") filed an Opposition (Doc. #29), to which Defendants replied (Doc. #36).

**I. Facts and Procedural Background**

Laurrance is a retired captain formerly employed by the Metropolitan Fire District in Sacramento, California. In late 2011, Laurrance began searching for a home in the Lake Tahoe area to live in during his retirement. After inspecting numerous homes, Laurrance's real estate agent showed him a home located at 565 Buchanan Drive in Incline Village, Nevada. Laurrance liked the

<sup>1</sup> Refers to the Court's docket number.

1 home, and learned that Defendant Deutsche Bank National Trust Company (“DBNT”) had acquired  
2 the property following foreclosure of the prior owners.

3 On February 4, 2012, Laurrance submitted a purchase offer, which was accepted on  
4 February 9. Also on February 9, Defendants signed a “Seller’s Real Property Disclosure Form.”  
5 This form denied the existence of any “encroachments, easements, zoning violations or non-  
6 conforming uses” in addition to “any substances, materials, or products which may be an  
7 environmental hazzard such as, but not limited to, asbestos, radon gas, urea formaldehyde, fuel or  
8 chemical storage tanks, contaminated water or soil on the property.” Doc. #29, Ex. 17. The form  
9 also stated that the property was free of any features “shared in common with adjoining land  
10 owners such as: walls, fences, road, driveways or other features whose use or responsibility for  
11 maintenance may have an affect on the property.” *Id.* Finally, the form denied the existence of  
12 “any other conditions or aspects of the property which materially affect [the property’s] value or  
13 use in an adverse manner.” *Id.* Escrow for sale to Laurrance closed on March 13, 2012.

14 It is undisputed that Laurrance was not aware prior to the sale that an underground high  
15 pressure gas transmission pipeline lies beneath the property. In fact, there are two pipelines on the  
16 565 Buchanan Drive property; one is ten inches in diameter and the other is approximately eight  
17 inches in diameter. On January 26, 2012, Southwest Gas Company (“Southwest”) notified Yun  
18 Suh (“Suh”), an attorney in the legal department for Deutsche Bank AG (“DBAG”),<sup>2</sup> a separate  
19 corporate entity from DBNT, that Southwest’s subsidiary Paiute Pipeline Company has a pipeline  
20 running across 565 Buchanan Drive, that the pipeline had been exposed by the previous owner, and  
21 that the problem needed to be addressed as soon as possible. Suh responded that the message had  
22 been forwarded, but did not indicate to whom the email was forwarded.<sup>3</sup> Laurrance became aware  
23 of the pipelines on his property in early May, 2012, when he received a letter from Paiute Pipeline

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24 <sup>2</sup> Deutsche Bank AG is not a party to this action.

25 <sup>3</sup> Laurrance requested information about the contents and destination of this forwarded email in  
26 discovery. Defendants responded: “Those documents will not be produced, however, as they are all protected  
by the attorney-client privilege.” Doc. #19, Ex. B.

1 Company, a subsidiary of Southwest, requesting to set a meeting to discuss easement and pipeline  
2 exposure issues. *See* Doc. #29, Ex. 3. Laurrance states that Paiute told Laurrance that “Deutsche  
3 Bank had been notified” about the pipeline issues. *Id.*, Laurrance Decl. ¶4.

4 Laurrance purchased the property for \$474,900.00 but represents that he would not have  
5 purchased the property if he had known about the pipelines that had not been disclosed. Laurrance  
6 represents that discovery of the pipelines resulted in a loss of value to the property of at least  
7 \$71,235.00. On December 19, 2013, Laurrance filed a Complaint alleging five causes of action: (1)  
8 violation of Nev. Rev. Stat (“NRS”) 113.110; (2) breach of contract; (3) unjust enrichment; (4)  
9 fraud; and (5) negligence. Doc. #1. Defendants filed their Motion for Summary Judgment on  
10 December 17, 2014. Doc. #19. After multiple extensions of time, Laurrance filed a timely  
11 Opposition, and Defendants filed a timely reply.

## 12 **II. Legal Standard**

13 Summary judgment is appropriate only when the pleadings, depositions, answers to  
14 interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the record  
15 show that “there is no genuine issue as to any material fact and the movant is entitled to judgment  
16 as a matter of law.” Fed. R. Civ. P. 56(a). In assessing a motion for summary judgment, the  
17 evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the  
18 light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio*  
19 *Corp.*, 475 U.S. 574, 587 (1986); *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154  
20 (9th Cir. 2001). A motion for summary judgment can be complete or partial, and must identify  
21 “each claim or defense—or the part of each claim or defense—on which summary judgment is  
22 sought.” Fed. R. Civ. P. 56(a).

23 The party moving for summary judgment bears the initial burden of informing the court of  
24 the basis for its motion, along with evidence showing the absence of any genuine issue of material  
25 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the  
26 burden of proof, the moving party must make a showing that no “reasonable jury could return a

1 verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). On  
2 an issue as to which the nonmoving party has the burden of proof, however, the moving party can  
3 prevail merely by demonstrating that there is an absence of evidence to support an essential element  
4 of the non-moving party’s case. *Celotex*, 477 U.S. at 323.

5 To successfully rebut a motion for summary judgment, the nonmoving party must point to  
6 facts supported by the record that demonstrate a genuine issue of material fact. *Reese v. Jefferson*  
7 *Sch. Dist. No. 14J*, 208 F.3d 736, 738 (9th Cir. 2000). A “material fact” is a fact “that might affect  
8 the outcome of the suit under the governing law.” *Liberty Lobby*, 477 U.S. at 248. Where  
9 reasonable minds could differ on the material facts at issue, summary judgment is not appropriate.  
10 *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material fact is considered  
11 genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving  
12 party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of evidence in support of  
13 the party’s position is insufficient to establish a genuine dispute; there must be evidence on which a  
14 jury could reasonably find for the party. *See id.* at 252. “[S]peculative and conclusory arguments  
15 do not constitute the significantly probative evidence required to create a genuine issue of material  
16 fact.” *Nolan v. Cleland*, 686 F.2d 806, 812 (9th Cir. 1982).

### 17 **III. Discussion**

#### 18 **A. Violation of NRS § 113.100 *et seq.***

19 Defendants argue that the pipelines do not constitute a “defect” under NRS § 113.100 *et*  
20 *seq.*, and that Laurrance has introduced no evidence to indicate that Defendants were aware of the  
21 pipelines when the property was sold to Laurrance. Laurrance argues that Defendants are not  
22 entitled to summary judgment on this claim because the pipelines constitute a defect as defined by  
23 the statute, and disputed questions of material fact remain as to whether Defendants were aware  
24 that there were pipelines underneath the property at the time of Laurrance’s purchase.

25 Section 113.100 *et seq.* requires a seller of residential property to provide the buyer with a  
26 written form “disclosing the conditions of the residential property,” including “the condition of any

1 electrical, heating, cooling, plumbing and sewer systems on the property, and the condition of any  
 2 other aspects of the property which affect its use or value.” NRS § 113.120(1). The disclosure  
 3 form requires the seller “to indicate whether or not each of those systems and other aspects of the  
 4 property has a defect of which the seller is aware.” *Id.* The statute defines “defect” as “a condition  
 5 that materially affects the value or use of residential property in an adverse manner.”  
 6 NRS 113.100(1). This is a continuing obligation; if “after service of the completed disclosure form  
 7 but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new  
 8 defect in the residential property that was not identified on the completed disclosure form,” the  
 9 seller must “inform the purchaser or the purchaser's agent of that fact, in writing, as soon as  
 10 practicable after the discovery of that fact but in no event later than the conveyance of the property  
 11 to the purchaser.” NRS § 113.130(1)(b).

### 12 **1. Defect**

13 Laurrance’s primary argument that the undisclosed pipelines constitute a defect under  
 14 NRS 113.100 *et seq.* involves reduction in property value. Laurrance estimates that the actual  
 15 value of his property declined by fifteen percent—from \$474,900.00 at the time of the sale, to  
 16 \$403,665.00 after discovery of the pipelines. Doc. #29 at 11. Defendants argue that Laurrance’s  
 17 estimation of the property’s decline in value should be disregarded because it is not supported by an  
 18 expert report or other evidence in the record. However, “[a]n owner of property may testify to its  
 19 value . . . so long as the owner has personal knowledge, *or* the ability to provide expert proof, of  
 20 value.” *Stephans v. State*, 262 P.3d 727, 731 (Nev. 2011) (emphasis added). “A party to a lawsuit  
 21 may testify as to the value of her personal or real property when that value is an issue in the case.”  
 22 *Dugan v. Gotsopoulos*, 22 P.3d 205, 207 (Nev. 2001).<sup>4</sup> “The jury may consider this testimony for  
 23 \_\_\_\_\_

24 <sup>4</sup> Defendants argue that *Dugan* is distinguishable because it “involves the value of an automobile, not  
 25 real property.” Doc. #36 at 6. However, *Dugan* specifically states that a party may testify “as to the value of  
 26 her personal *or real property*.” 22 P.3d at 207 (emphasis added). Defendants also refer to *Pitzel v. Software  
 Development and Investment of Nevada*, an unpublished Nevada Supreme Court decision, in which the court  
 held that a minority shareholder could only testify as to the value of his interest in the company if he testified  
 to certain complexities. No. 49163, 2008 WL 6124816, at \*4-5 (Nev. Dec. 31, 2008). The Court noted that

1 its weight in conjunction with other evidence of value.” *Id.* Expert testimony is not required. *Id.*  
2 at 207-08. Here, Laurrance represents that he has personal knowledge of the value of the property  
3 based on his research of at least thirty homes prior to purchasing the 565 Buchanan Drive property,  
4 and his experience living at the property and learning its attributes and flaws. As an owner of the  
5 real property at issue in this lawsuit, Laurrance’s opinion about the reduced value of the subject  
6 property is not improper. A jury can consider Laurrance’s value testimony in conjunction with  
7 other evidence, including Defendants’ expert report.

8 Defendants also argue that Laurrance’s valuation testimony should be disregarded because  
9 Defendants’ expert witness conducted an appraisal and determined that the value of the property  
10 was \$495,000.00. *See* Doc. #19, Ex. D. However, the differences in testimony between Laurrance  
11 and Defendants’ expert highlights a disputed question of material fact rather than the absence of a  
12 disputed question. Accordingly, the Court will not automatically discount Laurrance’s opinion  
13 regarding the reduced value of his property, and agrees with Laurrance that if proven, this reduction  
14 in value could constitute a defect under NRS § 113.100 *et seq.*

15 Defendants argue that Laurrance’s claimed defect is irrelevant because the statute for a  
16 seller’s failure to disclose states that “the purchaser is entitled to recover from the seller treble the  
17 amount necessary to repair or replace the defective part of the property.” NRS § 113.150(4).  
18 Defendants point to a portion of Laurrance’s deposition to argue that he “made it clear that he has  
19 not spent a single dollar on repairs.” Doc. #36 at 8. Indeed, Laurrance stated that his testimony  
20 regarding the \$71,235.00 reduction in value is not meant to reimburse him for replacement or  
21 repairs. Doc. #19, Ex. C at 173:2-9. However, Laurrance’s Response to Defendants’ Motion  
22 “estimates the loss of value to the property of at least \$71,235.00 plus out of pocket expenses for  
23 attorney fees for assisting review of the pipeline maintenance issues of at least \$4,000.”

24 \_\_\_\_\_  
25 valuation of a minority interest in a closely held corporation “is notoriously complex.” *Id.* at \*5. Valuation  
26 of real property is also complex, but the Court will not apply the *Pitzel* standard to real property where the  
Nevada Supreme Court has expressly held that a party can testify as to the value of real property, and has not  
held that a party must meet the same complexities outlined in *Pitzel* to establish reliable personal knowledge.

1 Doc. #29 at 5. The Court finds that Laurrance has adequately pleaded damages pursuant to  
2 NRS § 113.150(4). Nothing in the statute indicates that the plaintiff must repair or replace the  
3 harmed property prior to filing suit. If the evidence at trial supported Laurrance's position, then a  
4 reasonable jury could find that Laurrance was entitled to damages pursuant to the \$71,235.00  
5 reduction in value and/or \$4000.00 reviewing the pipeline issues in order to make repair or  
6 replacement possible.

7 The Court has found that disputed questions of fact remain regarding whether the pipelines  
8 constitute defects under NRS § 113.100, *et seq.* and whether Laurrance is entitled to recover  
9 damages under NRS § 113.150(4). Accordingly, the Court shall grant Defendants' Motion as to  
10 this claim only if no facts in the record indicate that Defendants were aware of any defects prior to  
11 the sale.

## 12 **2. Defendants' Awareness of the Defect**

13 Defendants argue that they cannot be liable for any failure to disclose defects on subject  
14 property because they were not aware of such defects when Laurrance purchased the property. A  
15 seller's duty of disclosure only arises if the seller is aware of the relevant defects.  
16 NRS § 113.140(1). The Nevada Supreme Court has held that, "[t]he term 'aware' means 'marked  
17 by realization, perception, or knowledge.'" *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007). The  
18 court added that such knowledge was necessary because "it is impossible for a seller to disclose  
19 conditions in the property of which he or she has no realization, perception, or knowledge." *Id.*  
20 "The determination of whether a seller is aware of a defect, however, is a question of fact to be  
21 decided by the trier of fact." *Id.*

22 Laurrance argues that there remains a disputed question of material fact regarding whether  
23 Defendants were aware of the pipelines on the property prior to the sale. In particular, Laurrance  
24 points to the fact that Southwest contacted New York-based DBAG attorney Suh on January 23,  
25 2012, stating that there was a problem with the pipelines on the subject property that needed to be  
26 addressed. Suh then stated that the request email would be forwarded, and that Southwest should

1 inform Suh if they were not contacted by the end of the following day. Doc. #19, Ex. B. Laurrance  
 2 sought more information about the forwarded email through the discovery process, but Defendants  
 3 claimed attorney-client privilege. *See* Doc. #29, Ex. 13 at 3-4.<sup>5</sup> There is no dispute that these  
 4 communications occurred before sale of the property became final, on March 13, 2012.

5 Defendants argue that knowledge by an attorney at DBAG does not constitute admissible  
 6 evidence that DBNT had knowledge of the pipelines because the two entities are separate.<sup>6</sup> Indeed,  
 7 “federal courts have generally respected corporate efforts to maintain separate identities, and will  
 8 not pierce the formalities of separation merely because of a showing of complete ownership.”  
 9 *Hickory Travel Sys., Inc. v. TUI AG*, 213 F.R.D. 547, 553 (N.D. Cal. 2003) (citing *Doe v. Unocal*  
 10 *Corp.*, 248 F.3d 915, 928 (9th Cir. 2001)). “A subsidiary functions as the parent's alter ego if the  
 11 subsidiary is so intertwined with the parent that it functions as part thereof, and if disregarding that  
 12 unity of interest would result in fraud or injustice.” *Id.* Laurrance points to the fact that the same  
 13 law firm represents both DBAG and DBNT as national counsel, and Defendants’ assertion of the  
 14 attorney-client privilege related to Suh’s forwarding of the email regarding the pipelines, as  
 15 evidence that “[t]he two entities are unified in all matters.” Doc. #29 at 8.

16 Here, the Court need not determine whether DBNT and DBAG operate as the same entity.  
 17 Rather, the Court need only determine whether disputed questions of material fact remain as to  
 18 whether DBNT had knowledge of the pipelines on Laurrance’s property. Even if the entities are  
 19 completely separate, DBNT could have had knowledge of the pipelines based on the fact that  
 20 Suh—a DBAG lawyer—received an email from Southwest about the pipelines and stated that the  
 21 request had been forwarded, adding that Southwest should check in if they did not receive a

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22  
 23 <sup>5</sup> Defendants argue that the email chain at issue, which was produced in response to subpoenas filed  
 24 by Laurrance attorney John P. Henderson, are inadmissible because Henderson is licensed to practice law in  
 25 California, not Nevada, and he did not seek leave to practice pro hac vice in Nevada. This contention is directly  
 26 contradicted by the record. In particular, Henderson filed a Verified Petition to Practice Pro Hac Vice on  
 December 19, 2013 (Doc. #2), and the Court granted said Petition on December 23, 2013 (Doc. #3).

<sup>6</sup> Defendants describe the entities as follows: “Deutsche Bank AG is a global financial services  
 company headquartered in Frankfurt, Germany, whereas Defendant Deutsche Bank National Trust Company  
 is a California corporation headquartered in Los Angeles.” Doc. #19 at 11.



1 response by the following day. This creates an inference that the email was forwarded to the  
2 owners of the property—DBNT. Importantly, all evidence and inferences drawn therefrom must be  
3 resolved in favor of the party opposing summary judgment. *Matsushita Elec. Indus. Co.*, 475 U.S.  
4 at 587.

5 The Court therefore finds that there remain disputed questions of material fact upon which a  
6 reasonable juror could determine that Defendants were aware of the pipelines underneath 565  
7 Buchanan Drive prior to the sale to Laurrance. *See Nelson*, 163 P.3d 425 (“The determination of  
8 whether a seller is aware of a defect, however, is a question of fact to be decided by the trier of  
9 fact.”). Accordingly, the Court denies Defendants’ Motion for Summary Judgment as to  
10 Laurrance’s claim for violation of NRS § 113.100 *et seq.*

#### 11 **B. Breach of Contract**

12 Laurrance argues that Defendants breached the contract for sale of the 565 Buchanan Drive  
13 property by failing to disclose the existence of the pipelines underneath the property. Defendants  
14 argue that the Court should grant their Motion as to this claim because Laurrance cannot establish  
15 the breach or damages element of a breach of contract claim.

16 To prevail on a breach of contract claim, a plaintiff must demonstrate: (1) the existence of a  
17 valid contract; (2) that plaintiff performed or was excused from performance; (3) breach by the  
18 defendant; and (4) damages resulting from defendant’s breach. *See Restatement (Second) of*  
19 *Contracts* § 203 (2007); *see also Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev.  
20 2006) (citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865)). “Whether a party has breached a  
21 contract and whether the breach is material are questions of fact.” *Las Vegas Sands, LLC v.*  
22 *Nehme*, 632 F.3d 526, 536 (9th Cir. 2011) (citing *Hoffman v. Eighth Judicial District Court*, 823  
23 P.2d 848, 850 (Nev. 1974)). However, “[i]nterpretation of a contract is a matter of law,” and  
24 summary judgment “is appropriate when the contract terms are clear and unambiguous, even if the  
25 parties disagree as to their meaning.” *United States v. King Features Entm’t, Inc.*, 843 F.2d 394,  
26 398 (9th Cir. 1988).

1 Defendants' argument for summary judgment is "based on the same lack of evidence that is  
 2 fatal to [Laurrance's] NRS 113.100 *et seq.* claim. Specifically . . . Plaintiff cannot show that  
 3 Defendants knew of the existence of the gas lines prior to the close of the sale." Doc. #19 at 14.  
 4 As discussed above, the Court finds that disputed questions of material fact remain as to whether  
 5 Defendants knew of the existence of the pipelines before the sale occurred. Defendants argue  
 6 further that Laurrance "cannot prove he suffered any damages as a result of the breach" because his  
 7 estimation of the reduction in value of his property was not supported by an expert. *Id.* at 15. As is  
 8 also discussed above, a property owner "may testify as to the value of her personal or real property  
 9 when that value is an issue in the case, and expert testimony is not required." *Dugan*, 22 P.3d at  
 10 207. Accordingly, the Court finds that disputed questions of material fact remain and denies  
 11 Defendants' Motion for Summary Judgment as to Laurrance's breach of contract claim.

### 12 **C. Unjust Enrichment**

13 Unjust enrichment occurs whenever an entity "has and retains a benefit which in equity and  
 14 good conscience belongs to another." *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov.*  
 15 *12, 1975*, 942 P.2d 182, 187 (Nev. 1997). To prevail on a claim for unjust enrichment, the plaintiff  
 16 must establish: (1) the existence of a benefit conferred on defendant by plaintiff; (2) appreciation by  
 17 the defendant of such benefit; and (3) acceptance of the benefit by defendant under circumstances  
 18 that would be inequitable for him to retain the benefit without payment. *Unionamerica Mortg. &*  
 19 *Equity Trust v. McDonald*, 626 P.2d 1272, 1273 (Nev. 1981). "An action based on a theory of  
 20 unjust enrichment is not available when there is an express, written contract, because no agreement  
 21 can be implied when there is an express agreement." *Leasepartners*, 942 P.2d at 187.

22 Here, there is no dispute that Laurrance entered into a valid written contract with  
 23 Defendants. In fact, Laurrance has sued Defendants for breach of said written contract. This Court  
 24 has held that a claim for unjust enrichment can survive despite the presence of a written contract if  
 25 one party argues that the written contract is invalid—such invalidity would prevent the application  
 26 of the written agreement, and a party could then argue unjust enrichment based on an implied

1 agreement. *Cass, Inc. v. Production Pattern and Foundry Co., Inc.*, No. 3:13-cv-0701, 2015 WL  
 2 995100, at \*7 (D. Nev. Mar. 5, 2015) (citing *Takiguchi v. MRI Int'l, Inc.*, 47 F. Supp. 3d 1100,  
 3 1119 (D. Nev. 2014)). However, Defendants do not argue that the contract was invalid, but merely  
 4 that their actions did not breach the contract as Laurrance alleges. Because an unjust enrichment  
 5 action cannot succeed where the parties entered into a valid written contract, the Court grants  
 6 Defendants' Motion for Summary Judgment as to Laurrance's unjust enrichment claim.

#### 7 **D. Fraud**

8 Defendants' Motion for Summary Judgment as to Laurrance's fraud claim relies on the  
 9 legal standards applicable to dismiss a claim for fraud under Federal Rule of Civil Procedure  
 10 12(b)(6). Courts can grant summary judgment for failure to meet the heightened pleading  
 11 requirements of Federal Rule of Civil Procedure 9(b). *See Racine v. PHW Las Vegas, LLC*, 46 F.  
 12 Supp. 3d 1028, 1045 (D. Nev. 2014) (granting summary judgment on defendant's fraud-based  
 13 punitive damages claim because plaintiff failed to allege fraud to the particularity requirements of  
 14 Rule 9(b) in the complaint); *Diep v. Durst-Pro-USA, Inc.*, No. 04-0984, 2006 WL 1788175, at \*8  
 15 (D. Or. June 23, 2006) (granting summary judgment on plaintiff's fraud claim for failure to meet  
 16 the Rule 9(b) requirements, and denying leave to amend as futile); *Carr v. N.Y. Stock Exch., Inc.*,  
 17 414 F. Supp. 1292, 1301 (N.D. Cal. 1976) (finding that a court can enter summary judgment "on  
 18 the ground that the amended complaint does not relate with sufficient particularity the elements of  
 19 fraud required by" Rule 9(b)).

20 To succeed on a claim for civil fraud, a plaintiff must establish five elements: (1) a false  
 21 representation by the defendant; (2) defendant's knowledge or belief that the representation is false;  
 22 (3) defendant's intention to induce the plaintiff to act or refrain from acting in reliance upon the  
 23 misrepresentation; (4) plaintiff's justifiable reliance; and (5) damage to the plaintiff. *Bulbman, Inc.*  
 24 *v. Nev. Bell*, 825 P.2d 588, 592 (Nev. 1992). Federal Rule 9(b) requires a party alleging fraud to  
 25 plead such a claim with particularity. Averments of fraud must be accompanied by "'the who,  
 26 what, when, where, and how of the misconduct charged,' as well as 'what is false or misleading

1 about [the purportedly fraudulent] statement, and why it is false.” *Cafasso, U.S. ex rel. v. Gen.*  
 2 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Ebeid ex rel. U.S. v.*  
 3 *Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010)). In the context of a fraud suit involving multiple  
 4 defendants, a plaintiff must, at a minimum, ‘identif[y] the role of [each] defendant[ ] in the alleged  
 5 fraudulent scheme.” *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007) (alterations in  
 6 original) (quoting *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989)).

7 Defendants are correct that Laurrance has failed to meet the Rule 9(b) heightened pleading  
 8 requirement to support his claim for fraud. Although the Complaint outlines general facts about the  
 9 alleged fraud, it lacks detail and fails to include “the who, what, when, where, and how” with any  
 10 specificity. For pleading deficiencies, courts generally grant plaintiffs leave to amend the  
 11 complaint’s shortcomings. The standard for granting leave to amend is generous, and courts will  
 12 only deny leave to amend if the party opposing amendment shows “bad faith, undue delay,  
 13 prejudice to the opposing party, futility of amendment,” or that the plaintiff has previously  
 14 amended the complaint without healing its defects. *United States v. Corinthian Colls.*, 655 F.3d  
 15 984, 995 (9th Cir. 2011) (citing *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)); *see also*  
 16 Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave when justice so requires.”). The Court  
 17 does not find at this point that amendment would be in bad faith, futile, cause undue delay, or  
 18 otherwise prejudice Defendants. Accordingly, Laurrance’s fraud claim is dismissed without  
 19 prejudice. If Laurrance elects to file an Amended Complaint, he shall do so within fourteen days of  
 20 this Order.

#### 21 **E. Negligence**

22 “[T]o prevail on a traditional negligence theory, a plaintiff must establish that (1) the  
 23 defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was  
 24 the legal cause of the plaintiff’s injuries, and (4) the plaintiff suffered damages.” *DeBoer v. Senior*  
 25 *Bridges of Sparks Family Hosp.*, 282 P.3d 727, 732 (Nev. 2012).

26 ///

1           The Complaint bases Laurrance's negligence claim on a breach of Defendants' "legal duty  
2 to disclose all known defects on the property . . . prior to [Laurrance's] purchase of the subject  
3 property." Doc. #1 ¶35. Defendants argue that this claim must fail because Laurrance "cannot  
4 prove that Defendants knew of the existence of the gas lines prior to the sale of the Property."  
5 Doc. #19 at 18. As discussed above, disputed questions of material fact remain as to whether  
6 Defendants knew of the pipelines under the property at the time of the sale. Accordingly, the Court  
7 denies Defendants' Motion for Summary Judgment as to Laurrance's negligence claim.


8 **IV. Conclusion**

9           IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment (Doc.  
10 #19) is GRANTED in part and DENIED in part. Laurrance's claim for fraud is dismissed without  
11 prejudice.

12           IT IS FURTHER ORDERED that if Laurrance wishes to file an amended complaint he shall  
13 do so within fourteen (14) days of this Order.

14           IT IS SO ORDERED.

15           DATED this 17th day of September, 2015.

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17 LARRY R. HICKS  
18 UNITED STATES DISTRICT JUDGE  
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